

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

UNITED STATES OF AMERICA

v.

DONALD L. BLANKENSHIP

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Criminal No. 5:14-cr-00244

**DEFENSE MOTION NO. 6A,
MOTION TO DISMISS COUNT ONE OF THE SUPERSEDING INDICTMENT FOR
FAILURE TO STATE SPECIFIC INTENT**

Mr. Blankenship, through counsel, hereby moves to dismiss Count One of the superseding indictment for failure to state an offense. The grounds for this motion are the same as those set forth in Defense Motion No. 6, which was filed as a motion to dismiss Count One of the original indictment (ECF No. 85), and the defense hereby incorporates the briefs and accompanying exhibits it submitted in support of that motion (ECF Nos. 85, 86, 147). The government already has responded (ECF No. 129). As set forth below, the rearrangement of charges in the superseding indictment does not affect any of the issues raised in the original motion. Accordingly, this motion is fully briefed and ripe for argument.

For the Court's convenience, the previously filed briefs are attached as exhibits to this motion: Exhibit A contains Mr. Blankenship's opening brief, Exhibit B contains the exhibits to that brief, Exhibit C contains the government's opposition, and Exhibit D contains Mr. Blankenship's reply brief.

The only relevant change made in the superseding indictment is the combination of what were previously charged as two separate conspiracies in two separate counts – a conspiracy to willfully violate mine safety standards and a conspiracy to defraud the United States government

– into a single conspiracy count involving both. This motion, previously addressed to Count One’s conspiracy to willfully violate mine safety standards, is now addressed to that same object of the new conspiracy count pled in new Count One. *See* Superseding Indictment ¶ 87(a).¹

Even if the Court finds that the other alleged object – fraud on the United States – is sufficient to state an offense, Count One of the superseding indictment must still be dismissed because it is pervaded by the insufficient and irrelevant allegations regarding mine safety violations, and it is impossible to know whether the grand jury would have returned the new Count One charge in their absence. *See United States v. Russell*, 369 U.S. 749, 770 (1962); *Stirone v. United States*, 361 U.S. 212, 216 (1960); *United States v. Pleasant*, 125 F. Supp. 2d 173, 184-85 (E.D. Va. 2000); *United States v. D’Alessio*, 822 F. Supp. 1134, 1145 (D.N.J. 1993). At bare minimum, and only in the alternative, the allegations challenged in this motion must be struck from the indictment.

¹ Paragraphs 1 through 85 of the superseding indictment are identical to the original indictment, and therefore all references to those paragraphs in the motion remain the same. On page 9 of the motion, the citations to paragraphs 87 and 90 of the original indictment should be changed to paragraphs 87(a) and 91 of the superseding indictment.

WHEREFORE, Mr. Blankenship respectfully requests dismissal of Count One of the superseding indictment.

Dated: April 7, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been electronically filed and service has been made
by virtue of such electronic filing this 7th day of April 2015 on:

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